



PLANNING COMMISSION AGENDA REPORT

III. 1.

MEETING DATE: MAY 22, 2006

ITEM NUMBER:

SUBJECT: ZONING CODE AMENDMENT CO-06-04 AMENDING TITLE 13 OF THE COSTA MESA MUNICIPAL CODE REGARDING THE DEFINITION, REVIEW PROCEDURE, AND REGULATION OF "ASSEMBLY USE".

DATE: MAY 10, 2006

FOR FURTHER INFORMATION CONTACT: KIMBERLY BRANDT, AICP, PRINCIPAL PLANNER
(714) 754-5604

DESCRIPTION

An ordinance amending the City of Costa Mesa Zoning Code to include a definition of "assembly use" and to establish the review procedure and regulation of assembly uses.

RECOMMENDATION

Recommend to City Council that either the original proposed ordinance or the alternative be given first reading.



KIMBERLY BRANDT, AICP
Acting Asst. Development Svs. Director

BACKGROUND

On August 22, 2005 and September 26, 2005, Planning Commission considered a proposed ordinance, which would allow churches/places of religious assembly to be "permitted" land uses in the C1 and C2 commercial zones, provided that they were located a minimum of 200 feet away from any residential zone and comply with all other applicable code standards including parking. On a 3-2 vote (Egan and Garlich voting no), Commission recommended to City Council that the City's existing zoning regulations be retained for this land use.

On October 18, 2005, Council considered the proposed ordinance and Commission's recommendation. After deliberation, Council tabled the ordinance and directed staff to prepare a new ordinance that requires a conditional use permit for all assembly uses and includes a definition of religious assembly, on a 3-1 vote (Foley voting no; Monahan absent).

On January 23, 2006, Commission reviewed the attached ordinance and requested a study session; this session occurred on March 20, 2006.

On April 24, 2006, Commission held a public hearing on the draft ordinance and continued the hearing until May 22, 2006 and directed staff to create an alternative ordinance. Commission also requested that this item be discussed at their May 15, 2006 study session.

ANALYSIS

Commission directed staff to prepare an alternative ordinance that would allow churches and other places of religious assembly to be permitted in certain commercial and industrial zones provided there are standards in place that consider surrounding land uses, and that there is a distinction between the primary function of a church/other place of religious assembly and any ancillary uses that may be associated with it. The alternative ordinance is contained in Attachment 2.

In order to achieve Commission's objectives, the alternative ordinance includes the following:

1. It includes a definition of "churches and other places of religious assembly" as shown below. This definition also identifies land uses that are not considered the primary function of churches and other places of religious assembly.

"Churches and other places of religious assembly. A type of assembly use which has the principal purpose of religious worship and for which the primary space is a sanctuary. Religious activities and services held in the sanctuary are conducted at scheduled times. The use may also include accessory facilities in the same or separate building that includes classrooms, assembly rooms, restrooms, kitchen, library, and a one-family dwelling unit. Other uses such as, but not limited to, day care facilities,

nursery schools, schools, retail sales, and services to businesses, are not considered a primary function of churches and other places of religious assembly.”

2. The alternative ordinance also includes a new Zoning Code article that contains specific development standards for churches and other places of religious assembly. These standards are similar to the existing Zoning Code standards the City has adopted for restaurants and bars (another type of assembly use). In the alternative ordinance, Section 13-51.51 and Table 13-30 note when churches and other places of religious assembly are permitted uses or conditional uses. Section 13-51.51 also notes that land uses that are not the primary function of a church/place of religious assembly will be subject to the review and approval procedures in the Zoning Code that would be applied if the proposed land use was an independent business locating in the applicable zoning district.

For example, if an applicant proposes a nursery school in conjunction with a church, which was located in a C2 zone, the nursery school would not be considered the primary function of the church. Under usual situations, a nursery school requires a conditional use permit in the C2 zone. Therefore, the applicant would need to obtain a conditional use permit prior to opening the nursery school.

Another example would be a retail bookstore that was proposed on church property that was located in a C2 zone. Again, the bookstore is not considered the church's primary function; however, since the zone is C2 and bookstores are permitted in this zone, the applicant would not be required to obtain a conditional use permit. If, however, the underlying zoning was MP (Industrial Park), then the applicant would be required to obtain approval of a conditional use permit, because retail uses are not permitted by right in the industrial zones.

At the April 24, 2006 public hearing, Commission raised questions about employment/job centers locating on church properties. Staff has previously determined that employment/job centers are considered “offices: services to businesses”, which are permitted in the commercial and industrial zones provided that the business is conducted totally indoors. Under this alternative ordinance, an employment/job center would be a permitted land use on a church property that was located in either a commercial or industrial zone provided that business was conducted entirely indoors, including any waiting area.

Finally, this alternative ordinance contains specific development standards should a church or place of religious assembly be located within 200 feet of a residentially-zoned property. These standards are contained in Section 13-51.53.

ALTERNATIVES CONSIDERED

Commission may choose to do any of the following:

1. Recommend to Council that first reading be given to the original draft ordinance or alternative ordinance; or
2. Modify any of the recommended changes to either ordinance; or
3. Recommend to Council that the City's existing zoning provisions be retained.

ENVIRONMENTAL DETERMINATION

This code amendment has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines, and the City's environmental procedures, and has been found to be exempt pursuant to Section 15061(3) of the CEQA Guidelines contained in the California Code of Regulations.

CONCLUSION

Staff believes that either the original or alternative ordinance results in equal treatment in the City's Zoning Code of assembly uses that are protected by the First Amendment of the United States Constitution when compared to other types of assembly uses.

Attachments: 1. Proposed Ordinance - (strike-through version)
 2. Alternative Ordinance

Distribution: Deputy City Manager - Dev. Svs. Director
 Deputy City Attorney
 City Engineer
 Fire Protection Analyst
 Staff (4)
 File (2)

Mr. Ed Fawcett, Costa Mesa Chamber of Commerce
Ms. Diane Pritchett, South Coast Metro Alliance

File: 052206Title13AssemblyUse	Date: 050706	Time: 10:00 a.m.
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ATTACHMENT 1

PROPOSED ORDINANCE

ORDINANCE NO. 06-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA ADOPTING ZONING CODE AMENDMENT CO-06-04 WHICH AMENDS TITLE 13 OF THE COSTA MESA MUNICIPAL CODE REGARDING THE DEFINITION, REVIEW PROCEDURE, AND REGULATION OF "ASSEMBLY USE".

THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Title 13 of the Costa Mesa Municipal Code is hereby amended to read as follows:

a. Amend Section 13-6 to include the following definition:

"Assembly use. A use conducted in a structure or portion of a structure for the purpose of a civic, education, political, religious, or social function or for the consumption or receipt of food and/or beverages. Assembly use includes, but is not limited to, churches and other places of religious assembly, mortuaries, primary and secondary schools, trade and vocational schools, colleges, amusement centers, billiards parlors, bowling centers, establishments where food or beverages are served, motion picture theaters, physical fitness facilities, skating rinks, and dance, martial arts, and music studios. Assembly use does not include sexually oriented business."

b. Amend the following definition in Section 13-6:

"Public area – ~~assembly use establishments where food or beverages are served.~~ That portion of a structure, an entire structure, or an exterior area establishment reserved for the exclusive use of the public assembling for the purpose of a civic, education, political, religious, or social function or for the receipt or consumption of food and/or beverages. For the purpose of this Zoning Code, public area shall not include restrooms, kitchens, hallways, offices, or other areas restricted to employees only."

c. Amend Table 13- 30 as shown in Attachment A.

d. Amend Table 13-47 as shown below:

TABLE 13-47 PERMITTED AND CONDITIONALLY PERMITTED USES								
LOCATION AND OPERATIONAL CHARACTERISTICS	C1-S	C1	C2	CL	TC	PD	MG	MP
Establishments with 300 square feet or less of public area. <u>Exception: If located in a multi-tenant center where 30% or more of the tenants are similar businesses, i.e., establishments with less than 300 square feet of public area, the establishment shall be subject to review and approval of a minor conditional use permit.</u>	P ^{1,2} or P	P	P	MC P	P ¹ or P	P ¹ or P	P	P
Establishments with more than 300 square feet of public area.	P ¹ or P C	P C	P C	MC C	P ¹ or P C	P ¹ or P C	MC C	MC C
ADDITIONAL REQUIREMENTS								
<ol style="list-style-type: none"> Establishments located within 200 feet of a residential zone are subject to the requirements of Section 13-49 DEVELOPMENT STANDARDS FOR ESTABLISHMENTS WITHIN 200 FEET OF RESIDENTIALLY ZONED PROPERTY. Establishments with drive-through operations are subject to the requirements of Section 13-50 DEVELOPMENT STANDARDS FOR DRIVE-THROUGH OPERATIONS. Establishments with live or public entertainment are subject to the requirements of Title 9, Article 11, REGULATORY PERMITS FOR PUBLIC ENTERTAINMENT. 								
EXCEPTIONS								
Located within 200 feet of a residential zone. (Subject to the requirements of Section 13-49 DEVELOPMENT STANDARDS FOR ESTABLISHMENTS WITHIN 200 FEET OF RESIDENTIALLY ZONED PROPERTY)	P ¹ or P	P	P	MC	P ¹ or P	P ¹ or P	P	P
Sale of alcoholic beverages for on-site consumption after 11:00 p.m. and/or provision of live entertainment or dancing located within 200 feet of a residential zone.	P ¹ or C	C	C	C	P ¹ or C	P ¹ or C	C	C
Sale of alcoholic beverages for on-site consumption after 11:00 p.m. and/or provision of live entertainment or dancing located not within 200 feet of a residential zone.	P ¹ or MC	MC	MC	MC	P ¹ or MC	P ¹ or MC	MC	MC
Drive-through operations. (Subject to the requirements of Section 13-50 DEVELOPMENT STANDARDS FOR DRIVE-THROUGH OPERATIONS)	P ¹ or MC	MC	MC	MC	P ¹ or MC	P ¹ or MC	MC	MC
Establishments with less than 300 square feet of public area located in a multi-tenant center where 30% or more of the tenants are similar businesses, i.e., establishments with less than 300 square feet of public area.	P ¹ or MC	MC	MC	MC	P ¹ or MC	P ¹ or MC	MC	MC
Establishments with a micro-brewery	P ¹ or C	C	C	C	P ¹ or C	P ¹ or C	C	C
<ol style="list-style-type: none"> Pursuant to an approved master plan which specifies these operational characteristics and/or location of the business. For the purposes of this table, the symbols in the non-shaded areas shall have the following meaning: P= Permitted; MC= Minor Conditional Use Permit; C= Conditional Use Permit." 								

- e. Amend Section 13-49 to read as follows:

"Establishments where food or beverages are served that are within 200 feet of residentially-zoned property shall comply with the following development standards, unless the standards are modified through the issuance of a ~~minor conditional use permit~~ or conditional use permit."

- f. Amend Section 13-50 to read as follows:

"Establishments with drive-through operations shall comply with the following development standards, unless the standards are modified through the issuance of a ~~minor conditional use permit~~."

- g. Amend Section 13-50(d) to read as follows:

"(d) Each drive-through lane shall be a minimum of 160 feet in length, unless modified by the final review authority Zoning Administrator. The length of the drive-through lane shall be measured from its entrance point to the pick-up window."

- h. Amend Section 13-50(f) to read as follows:

"(f) Application for a ~~minor conditional use permit~~ shall include an operation statement indicating the physical improvements and operational measures proposed to minimize idling vehicle emissions."

- i. Amend Section 13-51(b)(1) to include the following subparagraph:

"g. The introduction of a micro brewery."

Section 2. Environmental Determination. The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines, and the City's environmental procedures, and has been found to be exempt pursuant to Section 15061(3) of the CEQA Guidelines contained in the California Code of Regulations.

Section 3. Inconsistencies. Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to the extent necessary to affect the provisions of this Ordinance.

Section 4. Severability. If any chapter, article, section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, or the application thereof to any person, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this Ordinance or its application to other persons. The City Council hereby declares that it would have adopted this Ordinance and each chapter, article, section, subsection, subdivision, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, phrases, or portions of the application thereof to any person, be declared invalid or unconstitutional. No portion of this Ordinance shall supersede any local, State, or Federal law, regulation, or codes dealing with life safety factors.

Section 5: This Ordinance shall take effect and be in full force thirty (30) days from and after the passage thereof and prior to the expiration of fifteen (15) days from its passage shall be

published once in the ORANGE COAST DAILY PILOT, a newspaper of general circulation, printed and published in the City of Costa Mesa or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the office of the City Clerk five (5) days prior to the date of adoption of this Ordinance, and within fifteen (15) days after adoption, the City Clerk shall cause to be published the aforementioned summary and shall post in the office of the City Clerk a certified copy of this Ordinance together with the names and member of the City Council voting for and against the same.

PASSED AND ADOPTED this ____ day of _____, 2006

Mayor

ATTEST:

APPROVED AS TO FORM:

City Clerk of the
City of Costa Mesa

City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF COSTA MESA)

I, Julie Folcik, City Clerk and ex-officio clerk of the City Council of the City of Costa Mesa, hereby certify that the above and foregoing Ordinance No. 06__ was introduced and considered section by section at a regular meeting of said City Council held on the ____ day of _____, 2006 and thereafter passed and adopted as a whole at a regular meeting of said City Council held on the ____ day of _____, 2006 by the following roll call vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the City of Costa Mesa this ____ day of _____, 2006

City Clerk and ex-officio
Clerk of the City Council of the
City of Costa Mesa

ATTACHMENT A

TABLE 13-30 CITY OF COSTA MESA LAND USE MATRIX													
LAND USES	ZONES												
	R1	R2 MD	R 2 H D	F A P	CL 1	C 1 2 S ¹	T C ¹	M G	M P	P D R L D ¹	P D R H D ¹	P D R N C M ¹	P D C ¹
24. Churches and other places of religious assembly with more than 300 square feet of public area	C	C	C	C	C	C	C	C	C	C	C	C	C
24a. Churches and other places of religious assembly with 300 square feet or less of public area	P	P	P	P	P	P	P	P	P	P	P	P	P
25. Civic and community clubs	C	C	C	C	C	C	C	C	C	C	C	C	C
37. Schools: trade and vocational	•	•	•	•	MC C	P C C	P C C	MC C	MC C	•	•	•	MC C
75. Entertainment, live or public	•	•	•	•	•	•	•	•	•	•	•	•	•
99. Motion picture theaters and other theaters NOT WITHIN 200' of residential zones Reserved.	•	•	•	•	•	•	•	•	•	•	•	•	•
100. Motion picture theaters and other theaters WITHIN 200' of residential zones	•	•	•	•	•	•	•	•	•	•	•	•	•
142. Studios: Dance, Martial arts: Music, etc. with 300 square feet or less of public area	•	•	•	•	•	•	•	•	•	•	•	•	•

1. Uses proposed in this zone are subject to verification of consistency with the adopted master plan. Uses not specified in the master plan, could be allowed, subject to the review process indicated in this matrix, if the proposed use is determined to be compatible with the adopted master plan.
2. This use is subject to the requirements of the referenced Municipal Code article or section.
3. If residential uses exist, accessory uses shall be permitted.
4. For the purposes of this table, the symbols in the non-shaded areas shall have the following meaning: C - Conditional Use Permit; MC - Minor Conditional Use Permit; P - Permitted; • - Prohibited

ATTACHMENT 2
ALTERNATIVE ORDINANCE

ORDINANCE NO. 06-

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Churches and other places of religious assembly. A type of assembly use which has the principal purpose of religious worship and for which the primary space is a sanctuary. Religious activities and services held in the sanctuary are conducted at scheduled times. The use may also include accessory facilities in the same or separate building that includes classrooms, assembly rooms, restrooms, kitchen, library, and a one-family dwelling unit. Other uses such as, but not limited to, day care facilities, nursery schools, schools, retail sales, and services to businesses, are not considered a primary function of churches and other places of religious assembly."

b. Amend Table 13- 30 as shown in Attachment A.

c. Add Article 4.5 to Chapter V as shown below:

"ARTICLE 4.5 DEVELOPMENT STANDARDS FOR CHURCHES AND OTHER PLACES OF RELIGIOUS ASSEMBLY

Sec. 13-51.50 PURPOSE

The purpose of this article is to regulate and provide development standards for churches and other places of religious assembly to ensure land use compatibility with adjacent land uses. The proximity of residential uses to this type of assembly use is a concern of this article. Where the distance criterion of 200 feet from residentially-zoned property is given in this article, it shall be measured from the property line of the site to the property line of the nearest residentially-zoned property.

Sec. 13-51.51 PERMITTED AND CONDITIONALLY PERMITTED USES

Churches and other places of religious assembly are subject to the review and approval procedures shown in Table 13-30 CITY OF COSTA MESA LAND USE MATRIX and the applicable development standards contained in this article. Other land uses such as, but not limited to, day care facilities, nursery schools, schools, primary and incidental retail sales, such as a bookstore, and services to businesses, that are not the primary function of a church or other place of religious assembly, shall be subject to the review and approval procedures shown in Table 13-30 CITY OF COSTA MESA LAND USE MATRIX for that specific land use.

Sec. 13-51.52 GENERAL DEVELOPMENT STANDARDS

Churches and other places of religious assembly are subject to the following development standards.

- (a) Outdoor activity areas are permitted provided that that area does not encroach into required street setback, parking and circulation, or interior landscaped areas; except as approved through the issuance of a minor conditional use permit.
- (b) All churches and other places of religious assembly shall comply with the review procedures indicated in Table 13-30, as well as with all other applicable development standards of this Title.

Sec. 13-51.53 DEVELOPMENT STANDARDS FOR CHURCHES AND OTHER PLACES OF RELIGIOUS ASSEMBLY WITHIN 200 FEET OF RESIDENTIALLY-ZONED PROPERTY

In addition to the General Development Standards required under Section 13-51.52, churches and other places of religious assembly that are within 200 feet of residentially-zoned property shall comply with the following development standards, unless the standards are modified through the issuance of a conditional use permit.

- (a) All exterior lighting shall be shielded and/or directed away from residential areas.
- (b) Outdoor public communication systems shall not be audible in adjacent residential areas.
- (c) Trash facilities shall be screened from view and designed and located appropriately to minimize potential noise and odor impacts to adjacent residential areas.
- (d) Outdoor activity areas shall be oriented away or sufficiently buffered from adjacent residential areas to prevent disturbance of the peaceful use of such areas by residents.
- (e) For new construction, a landscaped planter area, a minimum of 5 feet in width, shall be provided as an additional buffer to adjacent residential areas. The

planter area shall contain appropriate plant materials to provide an immediate and effective screen. Plant materials shall meet with the approval of the Planning Division. For interior alterations, the Planning Division may also require the construction of a landscaped planter area to buffer adjacent residential areas, if feasible.

- (f) For new construction, all interior property lines abutting residentially-zoned property shall have a minimum six-foot high masonry wall, as measured from the highest grade. An eight-foot high masonry wall may be required, based on the church's/place's of religious assembly operational characteristics, in order to provide additional protection to adjacent residential uses. A planning application may be required for walls exceeding six (6) feet in height. For interior alterations, the Planning Division may also require the construction of a masonry wall to buffer adjacent residential areas, if feasible.
- (g) Hours of operation for religious services shall not occur any time between 11:00 p.m. and 6:00 a.m.
- (h) Truck deliveries shall not occur anytime between 8:00 p.m. and 7:00 a.m."

Section 2. Environmental Determination. The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines, and the City's environmental procedures, and has been found to be exempt pursuant to Section 15061(3) of the CEQA Guidelines contained in the California Code of Regulations.

Section 3. Inconsistencies. Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to the extent necessary to affect the provisions of this Ordinance.

Section 4. Severability. If any chapter, article, section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, or the application thereof to any person, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this Ordinance or its application to other persons. The City Council hereby declares that it would have adopted this Ordinance and each chapter, article, section, subsection, subdivision, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, phrases, or portions of the application thereof to any person, be declared invalid or unconstitutional. No portion of this Ordinance shall supersede any local, State, or Federal law, regulation, or codes dealing with life safety factors.

Section 5: This Ordinance shall take effect and be in full force thirty (30) days from and after the passage thereof and prior to the expiration of fifteen (15) days from its passage shall be published once in the ORANGE COAST DAILY PILOT, a newspaper of general circulation, printed and published in the City of Costa Mesa or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the office of the City Clerk five (5) days prior to the date of adoption of this Ordinance, and within fifteen (15) days after adoption, the City Clerk shall cause to be published the aforementioned summary and shall post in the office of the City Clerk a certified

copy of this Ordinance together with the names and member of the City Council voting for and against the same.

PASSED AND ADOPTED this ____ day of _____, 2006

Mayor

ATTEST:

APPROVED AS TO FORM:

City Clerk of the
City of Costa Mesa

City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF COSTA MESA)

I, Julie Folcik, City Clerk and ex-officio clerk of the City Council of the City of Costa Mesa, hereby certify that the above and foregoing Ordinance No. 06__ was introduced and considered section by section at a regular meeting of said City Council held on the ____ day of _____, 2006 and thereafter passed and adopted as a whole at a regular meeting of said City Council held on the ____ day of _____, 2006 by the following roll call vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the City of Costa Mesa this ____ day of _____, 2006

City Clerk and ex-officio
Clerk of the City Council of the
City of Costa Mesa

ATTACHMENT A

TABLE 13-30

TABLE 13-30 CITY OF COSTA MESA LAND USE MATRIX																			
LAND USES	ZONES																		
	R1	R2 MD	R 2H D	R 3P	A P	CL 1	C 1 2	C 1 S	T C	M G	M P	P D R L D	P D R M D	P D R H D	P D R N C M	P D C	P D I	I & R	I & R S
24. Churches and other places of religious assembly (Subject to the requirements of ARTICLE 4.5 DEVELOPMENT STANDARDS FOR CHURCHES AND OTHER PLACES OF RELIGIOUS ASSEMBLY)	C ²	C ²	C ²	C ²	C ²	G ² P ²	G ² P ²	C ²	C ²	G ² P ²	G ² P ²	C ²	C ²	C ²	C ²	C ²	C ²	P ²	C ²

1. Uses proposed in this zone are subject to verification of consistency with the adopted master plan. Uses not specified in the master plan, could be allowed, subject to the review process indicated in this matrix, if the proposed use is determined to be compatible with the adopted master plan.
2. This use is subject to the requirements of the referenced Municipal Code article or section.
3. If residential uses exist, accessory uses shall be permitted.
4. For the purposes of this table, the symbols in the non-shaded areas shall have the following meaning: C - Conditional Use Permit; MC - Minor Conditional Use Permit; P - Permitted; ● - Prohibited